

August 17, 1998

**DURHAM, NORTH CAROLINA
MONDAY, AUGUST 17, 1998
7:30 P.M.**

The Durham City Council met in regular session on the above date and time in the Council Chamber at City Hall with the following members present: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Absent: None.

Also present: City Manager P. Lamont Ewell, City Attorney Henry Blinder, City Clerk Margaret M. Bowers and Deputy City Clerk D. Ann Gray.

Mayor Tennyson called the meeting to order and at this time, the Mayor announced that on Monday, September 7th a Labor Day Concert Celebration would be held on the Civic Center Plaza between 1:00 p.m. and 4:00 p.m.

The Mayor asked for priority items from the City Manager, City Attorney and City Clerk. City Manager Ewell recognized Sue Burke Manager of Storm Water Services. Ms. Burke informed Council that as a result of Hurricane Fran, the City of Durham applied for hazard mitigation grant funds in December 1996 from FEMA. She noted these funds would be used to voluntarily acquire flood prone homes in the River Forest and Old Farm neighborhoods and along Essex Road. She stated the City's final application must be submitted to the NC DEM by August 31, 1998 and the application process requires the Durham City Council to designate a person to execute and file the application on behalf of the City. Ms. Burke asked that an item be added to the agenda "Resolution Authorizing the City Manager to File a Hazard Mitigation Grant Program Application and Execute a Maintenance Agreement on Behalf of the City of Durham."

SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO FILE A HAZARD MITIGATION GRANT PROGRAM APPLICATION AND EXECUTE A MAINTENANCE AGREEMENT ON BEHALF OF THE CITY OF DURHAM

MOTION by Council Member Larson seconded by Council Member Miller to add this matter to the agenda was approved at 7:34 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

City Manager Ewell introduced representatives from Carolina Container Company for a presentation to the Mayor and City Council Members. Mr. Jimmy Jones, of Carolina Container Company, presented a check in the amount of \$38,000 for the Mayor and Council Members Summer Youth Program. Also, the young adults who

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participated in the Summer Youth Program were introduced.

City Clerk Bowers reminded the Council of a valid protest petition filed against GBA #5, Rezoning Case P98-4. **[No priority items from the City Attorney]**

Mayor Tennyson asked if any council member(s) or citizen(s) wanted to pull any item(s) from the Consent Agenda for discussion later in the meeting. The Mayor reminded the Council of the revised action regarding Consent Item 3, Human Relations Commission Appointments.

MOTION by Council Member Larson seconded by Council Member Miller to approve the Consent Agenda as amended was approved at 7:41 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

[CONSENT AGENDA]

SUBJECT: DURHAM POLICE DEPARTMENT HOUSING UNIT FIRST YEAR PROGRESS REPORT

MOTION by Council Member Larson seconded by Council Member Miller to receive the report as prepared and continue the City Council's support for this program was approved at 7:41 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

SUBJECT: TRAILS AND GREENWAYS PROGRESS UPDATE

MOTION by Council Member Larson seconded by Council Member Miller to receive a report from the Administration on the status of the City's Trails and Greenways Program was approved at 7:41 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

SUBJECT: HUMAN RELATIONS COMMISSION - APPOINTMENTS

MOTION by Council Member Larson seconded by Council Member Miller to appoint the following citizens to fill four vacancies (one African American, two Whites, and One Other Racial Minority Group Representative) to the Human Relations Commission for three-year

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terms to expire June 30, 2001; and

To refer one vacancy (African American seat) to the Finance Committee on August 27, 1998 for nomination was approved at 7:41 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

Harlin J. Gradin (WM)
Terrance T. McCabe (WM)
Ralph Kennedy Frazier (BM)
Angie Nevarez (HF)

SUBJECT: U. S. JUSTICE DEPARTMENT WEED AND SEED GRANT - NORTH EAST CENTRAL DURHAM

MOTION by Council Member Larson seconded by Council Member Miller to authorize the City Manager to enter into a Cooperative Agreement between the U.S. Justice Department, Office of Justice Programs in the amount of \$250,000 for the North East Central Durham (NECD) Weed and Seed Initiative, FY 1998-99; and

To adopt the "City of Durham Grant Project Ordinance U.S. Department of Justice, Office of Justice Programs Grant for NECD Weed and Seed Initiative" was approved at 7:41 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

Ordinance #11550

SUBJECT: PROPOSED FIVE-YEAR LEASE RENEWAL AGREEMENT WITH THE U. S. DEPARTMENT OF COMMERCE FOR A NATIONAL WEATHER SERVICE ANTENNA - HUCKLEBERRY SPRINGS RESERVOIR

MOTION by Council Member Larson seconded by Council Member Miller to approve and authorize the City Manager to execute the Lease Renewal Agreement for a National Weather Service antenna located on the communication tower at the Huckleberry Springs reservoir; and

To authorize changes as may seem desirable or appropriate to the City Manager, provided such changes do not materially affect the intent and purpose of the lease was approved at 7:41 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

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SUBJECT: PROPOSED INTERLOCAL COOPERATION AGREEMENT FOR THE GEOGRAPHIC INFORMATION SYSTEMS - COUNTY OF DURHAM

MOTION by Council Member Larson seconded by Council Member Miller to authorize the City Manager to execute an Interlocal Cooperation Agreement between the City of Durham and the County of Durham for countywide administration of the Geographic Information Systems was approved at 7:41 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

SUBJECT: USE OF CITY'S ECONOMIC DEVELOPMENT INVESTMENT FUND - SETTING PUBLIC HEARING

MOTION by Council Member Larson seconded by Council Member Miller to set a public hearing on Tuesday, September 8, 1998 regarding an applicant's request for the use of Economic Development Investment Funds was approved at 7:41 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

SUBJECT: RALEIGH-DURHAM AIRPORT AUTHORITY - FEDERAL AVIATION ADMINISTRATION AIP GRANT NUMBER 3-37-0056-22, NORTH RAMP GENERAL AVIATION AREA REDEVELOPMENT PHASE II

MOTION by Council Member Larson seconded by Council Member Miller to authorize the acceptance of a grant offer in the amount of \$2,776,464 for North Ramp General Aviation Area Redevelopment Phase II, RDU Project Number 080332, FAA AIP Grant Number 3-37-0056-22 to enhance efficiency of the general aviation area and to better position the airport to deal with the changing nature of general aviation activity; and

To authorize the City Manager to execute the Grant Agreement and the City Attorney to give assurances with respect thereto was approved at 7:41 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

SUBJECT: BOARD OF ADJUSTMENT - APPOINTMENT

MOTION by Council Member Larson seconded by Council Member Miller to appoint Tara Michelle Disy as an Alternate Member to the Board of Adjustment for a term to expire June 30, 2000 was approved at

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7:41 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

SUBJECT: DURHAM PLANNING COMMISSION - APPOINTMENTS

MOTION by Council Member Larson seconded by Council Member Miller to appoint the following citizens to Durham Planning Commission for three-year terms to expire June 30, 2001 was approved at 7:41 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

James Bridger Newman - District 1
Dale L. McKeel - District 5
Craigie D. Sanders - At-Large.

SUBJECT: HOUSING APPEALS BOARD - APPOINTMENTS

MOTION by Council Member Larson seconded by Council Member Miller to appoint citizens to fill four vacancies on the Housing Appeals Board as follows was approved at 7:41 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

Harrell Chotas, Regular Member, Neighborhood Association Representative--term expires June 30, 2001

Nancy Johnson Love, Regular Member, Residence Owner Representative--term expires June 30, 2000

Anthony D. Nicholson, Alternate Member, Attorney Representative--term expires June 30, 2001

Anita Hammond, Alternate Member, At-Large Representative--term expires June 30, 2001.

SUBJECT: PRELIMINARY PLAT APPROVAL - CAMERON WOODS SUBDIVISION

MOTION by Council Member Larson seconded by Council Member Miller to approve a preliminary plat for Cameron Woods Subdivision, submitted by Trinity Builders and R. L. Horvath and Associates, consisting of 77 single family detached lots, zoned R-10 and located on the north side of Pickett Road, east of US 15-501 Bypass, and south of Cornwallis Road (Tax Map 231-1-9, 10, 11, 12,

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13, and 14) was approved at 7:41 p.m. by the following vote:
Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

SUBJECT: NORTH CAROLINA INSTITUTE FOR THE PERFORMING ARTS - DATA CENTER SITE

MOTION by Council Member Larson seconded by Council Member Miller to formally endorse the selection of the DATA Center Site for the location of the North Carolina Institute for the Performing Arts in Downtown Durham was approved at 7:41 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

SUBJECT: DURHAM SANITARY LANDFILL CLOSURE CONSTRUCTION PROJECT - GILBERT SOUTHERN CORPORATION

MOTION by Council Member Larson seconded by Council Member Miller to authorize the City Manager to execute the Durham Sanitary Landfill Closures Construction Project Contract with Gilbert Southern Corporation for a total bid of \$4,719,630; and

To authorize the City Manager to execute any Change Orders encountered during the construction of the Sanitary Landfill Closure, provided the total cost of each individual Change Order does not exceed \$50,000 and that the total project cost does not exceed the project budget's contingency of twenty-five (25) percent was approved at 7:41 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

SUBJECT: NEW BERN PLACE SEWER OUTFALL - PROPOSED EASEMENT AND RIGHT-OF-ENTRY ON DEPARTMENT OF THE ARMY CORPS OF ENGINEERS PROPERTY

MOTION by Council Member Larson seconded by Council Member Miller to authorize the City Manager to execute an Easement for Pipeline Right-of-Way on B. Everett Jordan Dam and Lake and Right-of-Entry on B. Jordan Dam and Reservoir with the Department of the Army Corps of Engineers in order to provide sewer service to property owners on New Bern Place was approved at 7:41 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes:

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None. Absent: None.

SUBJECT: PARKING PROHIBITION - ROXBORO STREET

MOTION by Council Member Larson seconded by Council Member Miller to adopt an ordinance to prohibit parking at any time on the west side of Roxboro Street in the area beginning at the south curb line of Erie Street, if extended, and extending southwardly to the north curb line of Lawson Street, if extended was approved at 7:41 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

Ordinance #11551

SUBJECT: CONCERNS REGARDING CRIME, LOITERING, TRASH AND DETERIORATING HOUSING IN THE 1200 BLOCK OF WORTH STREET (CITIZEN'S MATTER)

MOTION by Council Member Larson seconded by Council Member Miller to receive a report from the Administration and accept the recommendations for plan of action was approved at 7:41 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

SUBJECT: ANNUAL CITY AUCTION - WESTER AUCTION & REALTY

a. Resolution Authorizing Annual City Auction

MOTION by Council Member Larson seconded by Council Member Miller to adopt a "Resolution Authorizing the Annual City Auction" was approved at 7:41 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

Resolution #8486

b. Auctioneering Services for 1998 Annual City Auction

MOTION by Council Member Larson seconded by Council Member Miller to authorize the City Manager to enter into a contract with Wester Auction & Realty in the sum of 5.45% of the gross sales for auctioneering services for the 1998 Annual City Auction was approved at 7:41 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth,

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Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

SUBJECT: STOP SIGN - GROVE PARK SUBDIVISION

MOTION by Council Member Larson seconded by Council Member Miller to adopt an ordinance authorizing the installation of a stop sign on Shoreline Cove at Southshore Parkway, northwest corner was approved at 7:41 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

Ordinance #11552

SUBJECT: STOP SIGN - FIELDSTONE SUBDIVISION

MOTION by Council Member Larson seconded by Council Member Miller to adopt an ordinance authorizing the installation of a stop sign on Woodcliff Circle at Wilderness Road, northwest corner was approved at 7:41 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

Ordinance #11553

SUBJECT: STOP SIGNS - VANTAGE POINT SUBDIVISION

MOTION by Council Member Larson seconded by Council Member Miller to adopt an ordinance authorizing the installation of stop signs at the following locations was approved at 7:41 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

- 1) Glossy Leaf Place at Grist Mill Lane, northwest corner
- 2) Wheatstone Court at Stephens Lane, southwest corner

Ordinance #11554

[GENERAL BUSINESS AGENDA]

[PUBLIC HEARINGS]

SUBJECT: IMPACT FEE APPEAL CASE 98-02 - JOHN W. JOHNSON (QUASI-

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JUDICIAL MATTER)

To receive information from staff regarding the impact fee appeal by John W. Johnson.

To conduct a hearing, review the evidence presented, and take action on the appeal.

To confirm the assessment of an impact fee and adopt the proposed decision regarding the retail business of John W. Johnson.

(Alternative Motion):

To direct staff to prepare a decision amending the impact fee assessment on the retail business of John W. Johnson based on the following findings:

- a. _____
- b. _____
- c. _____
- d. _____

Mayor Tennyson explained the proceedings for this matter.

City Clerk Bowers swore in the following individuals: John Johnson; Dawn Huynh; Mark Ahrendsen; and Earl Lewellyn.

Mayor Tennyson asked Council to reveal any possible conflicts and to withdraw from this hearing if necessary. Also, the Mayor asked if any Council Member had been exposed to any evidence or information that may not come out at the hearing tonight.

Mayor Tennyson opened the hearing on Case 98-02.

Testimony from Staff

Dawn Huynh, of the Treasury Department, stated John Johnson wanted to appeal the decision of the Impact Fee Appeals Board. She stated Mr. Johnson was the owner of an auto repair shop who was charged a higher impact fee than similar businesses based on the square footage of his shop. She noted Mr. Johnson contends that his auto shop does not result in a higher traffic volume and he should not be charged a higher impact fee.

Ms. Huynh stated the Impact Fee Appeals Board recommended the higher fee for the following reasons: 1) Based on the ordinance, Mr. Johnson's auto repair is considered a retail business and a retail business is assessed based on the size of the establishment; 2) The impact fee has been correctly calculated; and 3) There is an alternative method for calculating the impact fee; however, further information is needed from Mr. Johnson before this method can be utilized.

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Based on the above reasons, Ms. Huynh stated the administration recommended confirmation of the impact fee.

Ms. Huynh requested that the staff report be entered into evidence as a part of this hearing.

Mayor Tennyson asked if there were questions from the Council Members.

Council Member Miller asked the administration to explain the other method of calculating the fee.

Dawn Huynh stated the other method of calculating the fee was collecting the traffic data generated from his business. She noted the staff could use this data to compare with other similar businesses in the area.

Mayor Tennyson asked Mr. Johnson if he had any questions.

Testimony from Appellant

John Johnson stated his shop was located at 1320 Camden Avenue and he would be servicing the same number of vehicles as in the past. Mr. Johnson stated he was aware of a shop being built on East Club Boulevard and the impact fee for that location was \$4,000 vs. his impact fee of \$12,507.00 at 1320 Camden Avenue. He stated when he spoke with the Appeals Board he was told there was nothing in the ordinance that could change the charge. Mr. Johnson stated he felt this was unfair to him and any other small business in Durham.

Mayor Tennyson asked Mr. Johnson if he understood that he could submit a traffic study that might document lower traffic impact based on the use.

John Johnson stated he thought the City would be doing the traffic study and he did not know he was to provide this information.

Council Member McKissick stated the Council could not at the present respond to Mr. Johnson's concern because traffic data was not available from a traffic engineer.

A motion was made by Council Member McKissick to continue the public hearing on this matter for 90 days to allow Mr. Johnson to employ a traffic consultant. This motion was seconded by Council Member Jacobs.

Mark Ahrendsen, of the Transportation Division, stated they would work with Mr. Johnson to be certain that the data collected is useable for his case.

Council Member Blyth asked if there was any data currently available that could be used.

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Earl Lewellyn, of the Transportation Division, stated he attempted to use the data listed in the Institute of Transportation Engineers Trip Generation Manual. He stated unfortunately it was a low volume use that is not considered in the manual.

MOTION by Council Member McKissick seconded by Council Member Jacobs to continue the public hearing on this Impact Fee Appeal request for 90 days to allow Mr. John Johnson to employ a traffic consultant was approved at 7:58 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

SUBJECT: VOLUNTARY PETITIONS FOR ANNEXATION FOR FY99 - BARNYARD, BOULEVARD PROPERTIES, AND RIDGEWOOD SUBDIVISION

a. FY99-01, Barnyard

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard. There being no objections and/or allegations, the public hearing was declared closed.

MOTION by Council Member Miller seconded by Council Member Larson to receive citizens' comments concerning the annexation of Barnyard, which consists of 2.31 acres contiguous to the City Limits and located along Sayward Drive, south of Watkins Road, in southwest Durham County; and

To adopt "An Ordinance Annexing to the City of Durham an Area Hereinafter Described and Abutting Directly on the Present Corporate Boundary of the City of Durham, under the Provisions of NCGS 160A-31 (Barnyard)"--effective December 31, 1998 was approved at 8:03 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

Ordinance #11555

b. FY99-02, Boulevard Properties

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard. There being no objections and/or allegations, the public hearing was declared closed.

MOTION by Council Member Larson seconded by Council Member Miller to receive citizens' comments concerning the annexation of

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Boulevard Properties, which consists of 0.4591 acres contiguous to the City Limits and located along Sayward Drive, south of Watkins Road, in southwest Durham County; and

To adopt "An Ordinance Annexing to the City of Durham an Area Hereinafter Described and Abutting Directly on the Present Corporate Boundary of the City of Durham, under the Provisions of NCGS 160A-31 (Boulevard Properties)--effective December 31, 1998 was approved at 8:03 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

Ordinance #11556

c. FY99-03, Ridgewood Subdivision

To receive citizens' comments concerning the annexation of Ridgewood Subdivision, which consists of 51.84 acres non-contiguous to the City Limits and located on Mineral Springs Road and west of Fletcher's Chapel Road/Stallings Road.

To adopt "An Ordinance Annexing to the City of Durham an Area Hereinafter Described, Which is not Contiguous to the Present Corporate Boundary of the City of Durham, under the Provisions of NCGS 160A-58 Et. Seq. (Ridgewood Subdivision)--effective December 31, 1998.

MOTION by Council Member Larson seconded by Mayor Pro Tempore Clement refer this matter to the administration was approved at 8:04 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

Note: Public Hearing continued until the September 8, 1998 City Council Meeting.

SUBJECT: PROHIBITION OF THE POSSESSION OF OPEN CONTAINERS OF BEER AND UNFORTIFIED WINE AND CONSUMPTION OF BEER AND UNFORTIFIED WINE ON PUBLIC STREETS

To receive citizens' comments concerning "An Ordinance Amending the City Code of Durham to Prohibit the Possession of Open Containers of Beer and Unfortified Wine and Consumption of Beer and Unfortified Wine on Public Streets."

To adopt "An Ordinance Amending the City Code of Durham to Prohibit the Possession of Open Containers of Beer and Unfortified Wine and Consumption of Beer and Unfortified Wine on Public

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Streets."

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard.

Jack Preiss, representing New Directions for Downtown, noted that a meeting between New Directions, Old Five Neighborhood Association and the administration needed to be held on this matter. He stated the ordinance does not get to the heart of the problems facing Old Five Points.

Deborah Giles, representing Durham Community Prevention Partnership, spoke in support of the ordinance.

Dr. Lavonia Allison, spoke in support of the ordinance. Also, Dr. Allison asked for information on the enforcement process.

The Mayor asked if there were other individuals present wanting to speak. Mayor Tennyson closed the public hearing.

Deputy City Manager Brown stated the Police Chief holds on a regular basis briefings with her command staff and she will make the staff aware of the proposed ordinances. He noted the officers in the field will be made aware of the ordinances and they will be working along with the PAC's to begin identifying the locations.

MOTION by Council Member Larson seconded by Mayor Pro Tempore Clement to receive citizens' comments concerning "An Ordinance Amending the City Code of Durham to Prohibit the Possession of Open Containers of Beer and Unfortified Wine and Consumption of Beer and Unfortified Wine on Public Streets"; and

To adopt "An Ordinance Amending the City Code of Durham to Prohibit the Possession of Open Containers of Beer and Unfortified Wine and Consumption of Beer and Unfortified Wine on Public Streets" was approved at 8:32 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

Ordinance #11557

SUBJECT: PROHIBITION OF PUBLIC URINATION AND DEFECATION

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard.

Deborah Giles and Dr. Lavonia Allison spoke in support of this ordinance.

The Mayor asked if there were other individuals present wanting to speak. The public hearing was declared closed by the Mayor.

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MOTION by Council Member Larson seconded by Council Member Miller to receive citizens' comments concerning "An Ordinance Amending the City Code of Durham to Prohibit Public Urination and Defecation"; and

To adopt "An Ordinance Amending the City Code of Durham to Prohibit Public Urination and Defecation" was approved at 8:32 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

Ordinance #11558

SUBJECT: ZONING MATTER CASE P98-4 (AMENDED REQUEST) HOMESCAPE DEVELOPMENT COMPANY, 5622 GARRETT ROAD

Case: P98-4 (Amended Request)

Applicant: Homescape Development Company

Location: The 15.973-acre site consists of one parcel located at 5622 Garrett Road, identified as Tax Map 430B, Block 1, Lot 1

Request: Rezoning from R-20 (Residential 20); F/J-B to PDR-1.88 (Planned Density Residential with 1.88 units per acre); F/J-B.

To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the above described property out of R-20; F/J-B and placing same in and establishing same as PDR-1.88; F/J-B.

Zoning Committee's Recommendation: Denial (7-0) of the original request for PDR-2.51 zoning

City Manager's Recommendation: Approval of revised request for PDR-1.88 zoning

Note: Valid Protest Petition filed against this rezoning.

Nazeeh Abdul-Hakeem, of the City/County Planning Department, noted the applicant submitted a revised development plan for 30 lots instead of 40, and a new PDR request of 1.88. Mr. Hakeem stated the staff recommended approval of the request.

Proponents

Glenn Philips, representing the applicant, asked council to support the revised plan. He also stated they have eliminated the storm water retention pond.

Opponents

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Ed Thomas, a resident of Colorado Avenue, stated the revised plan represented lower density and was a good compromise.

Dr. Miguel Medina, representing the Bent Creek Neighborhood, stated they have reached a compromise with the applicant and they appreciated the developer's cooperation.

The Mayor asked if there were other persons present wanting to speak. Mayor Tennyson closed the public hearing.

MOTION by Council Member Larson seconded by Council Member Miller to adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the above described property out of R-20; F/J-B and placing same in and establishing same as PDR-1.88; F/J-B was approved at 8:43 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

SUBJECT: ZONING MATTER CASE P98-30, WILLIAM TAYLOR, 2804 ELLIS ROAD

Case: P98-30

Applicant: William Taylor

Location: The 20-acre site is located at 2804 Ellis Road, on the east side of Ellis Road, south of Cash Road (Tax Map 644, Block 1, Lot 18)

Request: Rezoning from R-20 (Residential 20 District) to RM-16(D) (Residential Multi-Family District with a Development Plan)

To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the above described property out of R-20 and placing same in and establishing same as RM-16(D).

Zoning Committee's Recommendation: Approval (7-0)

City Manager's Recommendation: Approval

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard.

Proponents

George Williams, representing the applicant, spoke in support of the request.

No one spoke in opposition. Mayor Tennyson closed the public hearing.

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Council Member McKissick raised concern with a bubble plan being presented by the applicant. He noted he would feel more comfortable with a plan that had more detail and specificity.

Council Member Blyth expressed the same concern as stated by Council Member McKissick.

Harold Smith, of the City/County Planning Department, stated the applicant was submitting a development plan as a part of the rezoning request.

Council Member Larson stated the type of development plan being submitted by the applicant was appropriate under the city's current ordinances.

Mayor Pro Tempore Clement informed his colleagues that George Williams was his brother-in-law; however, he had no financial interest in this matter and would be supporting the request.

MOTION by Council Member Larson seconded by Council Member Miller to adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the above described property out of R-20 and placing same in and establishing same as RM-16(D) was approved at 8:55 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: Council Member Blyth. Absent: None.

SUBJECT: ZONING MATTER CASE P98-32, DAVID HALEY, WEST SIDE OF WILLIAMSBURG ROAD NORTH OF CHAPEL HILL ROAD

Case: P98-32

Applicant: David Haley

Location: The 1.72-acre site is located on the west side of Williamsburg Road, north of Chapel Hill Road (Tax Map 433, Block 6, Lots 25A, 25B and 25C)

Request: Rezoning from R-5(D) (Residential 5 with a Development Plan) to R-5(D). (Change in Development Plan)

To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by amending the Development Plan in the R-5(D) zone (Change in Development Plan).

Zoning Committee's Recommendation: Approval (7-0)

City Manager's Recommendation: Approval

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard. There being no objections and/or allegations, the public hearing was declared

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closed.

MOTION by Mayor Pro Tempore Clement seconded by Council Member Miller to adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by amending the Development Plan in the R-5(D) zone (Change in Development Plan) was approved at 8:56 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

SUBJECT: ZONING MATTER CASE P98-34, ESA MANAGEMENT, ADJACENT TO PICKETT ROAD, PETTY ROAD AND TOWER BOULEVARD

Case: P98-34

Applicant: ESA Management

Location: 3.188 acres adjacent to Pickett Road, Petty Road and Tower Boulevard (Tax Map 234-1-7D)

Request: Rezoning from OI-1 (Transitional Office and Institutional District) and R-10 (Residential 10 District) to OI-2(D) (General Office and Institutional District with a Development Plan)

To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the above described property out of OI-1 and R-20 and placing same in and establishing same as OI-2(D).

Zoning Committee's Recommendation: Approval (7-0)

City Manager's Recommendation: Approval

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard.

Proponents

Attorney Malvern King, representing the applicant, spoke in support of the request. Mr. King stated ESA Management has agreed with the left turn lane along Pickett Road and the applicant will try and save as many trees as possible.

Opponents

Phil Lehman, a resident of Duke Forest, stated there were a lot of trees on the property particularly that border Pickett Road and the residents wanted them to be retained to the maximum extent possible. Mr. Lehman requested the council to make a recommendation regarding the preservation of the trees.

A citizen residing in Duke Forest addressed council regarding the

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promises that have been made and broken in the past. The citizen stated that ESA Management has worked with the neighborhood in proposing a much smaller structure than the previous developer [LaQuinta].

The Mayor asked if there were other persons present wanting to speak on this request. Mayor Tennyson closed the public hearing.

Attorney Malvern King stated a tree study was done to try and find a way to save as many of the trees as possible.

Nazeeh Abdul-Hakeem, of the City/County Planning Department, stated the tree survey was not part of the development plan. He noted the survey was a tool to be used by the applicant in helping them to preserve trees and identify sidewalk location.

MOTION by Mayor Pro Tempore Clement seconded by Council Member Brown to adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the above described property out of OI-1 and R-20 and placing same in and establishing same as OI-2(D) with note on development plan regarding 1) left turn lane; and 2) sidewalks will be located to maximize tree preservation was approved at 9:27 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

SUBJECT: REPORT FROM THE TAXICAB COMMISSION - JULY 22, 1998 MEETING

To receive a report from the Taxicab Commission and to take actions on the following recommendations of the Taxicab Commission--pursuant to Section 22.159 of the Durham City Code:

a. Late Payment/Cancellation of Insurance

1) Bates Taxi

Taxicab Inspector's Recommendation: Revoke taxicab operator's licenses for taxicabs #125 and #194 (in accordance with City Code)

Taxicab Commission's Recommendation: Allow Mr. Bates to retain his taxicab operator's licenses for taxicabs #125 and #194. (Vote 2-1)

MOTION by Mayor Pro Tempore Clement seconded by Council Member Miller to approve the Taxicab Commission's recommendation [allow Mr. Bates to retain his taxicab operator's licenses for taxicabs #125 and #194] was approved at 9:27 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council

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Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

2) Isoke's Cab Company

Taxicab Inspector's Recommendation: Revoke taxicab operator's license for taxicab #27 (in accordance with City Code)

Taxicab Commission's Recommendation: Allow Stephen Dixon to retain his taxicab operator's license for taxicab #27. (Vote 3-0)

MOTION by Mayor Pro Tempore Clement seconded by Council Member Langley to approve the Taxicab Commission's recommendation [allow Mr. Dixon to retain his taxicab operator's license for taxicab #27] was approved at 9:28 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

b. Denial of Taxicab Driver's Permit - Stephen Dixon

Taxicab Inspector's Recommendation: Deny renewal of Mr. Dixon's taxicab driver's permit (in accordance with City Code)

Taxicab Commission's Recommendation: Renew Mr. Dixon's taxicab driver's permit due to livelihood. (Vote 3-0)

MOTION by Council Member Miller seconded by Council Member Jacobs to approve the Taxicab Commission's recommendation [renew Mr. Dixon's taxicab driver's permit due to livelihood] was approved at 9:29 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

SUBJECT: AMENDMENT TO NON-CITY AGENCY GRANT AGREEMENTS - INCREASING THRESHOLD FOR REQUIRING FINANCIAL AUDIT

To require those agencies accepting grants of \$25,000 or greater to submit an annual financial audit by a Certified Public Accountant (CPA) as a condition of receiving City funds; and,

For agencies accepting grants of less than \$25,000, to authorize the City Manager to require an audit at the agency's expense should the City believe that improprieties may exist.

(This requirement would be effective with the execution of municipal grant agreements for FY 1998-99)

Note: At the Committee-of-the-Whole Meeting, Council voted to

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refer this item to the August 27, 1998 Finance Committee Meeting.

[ITEM ADDED TO THE AGENDA]

SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO FILE A HAZARD MITIGATION GRANT PROGRAM APPLICATION AND EXECUTE A MAINTENANCE AGREEMENT ON BEHALF OF THE CITY OF DURHAM

MOTION by Council Member Miller seconded by Mayor Pro Tempore Clement to adopt a "Resolution Authorizing the City Manager to File a Hazard Mitigation Grant Program Application and Execute a Maintenance Agreement on Behalf of the City of Durham" was approved at 9:30 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

Resolution #8487

There being no further business to come before the Council, the meeting was adjourned at 9:30 p.m.

D. Ann Gray
Deputy City Clerk

Margaret M. Bowers, CMC
City Clerk